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Committee against Torture

Communication No. 466/2011

Decision adopted by the Committee at its fifty-second session, 28 April–23 May 2014

Submitted by:	Nicmeddin Alp (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	21 June 2011 (initial submission)
Date of present decision:	14 May 2014
Subject matter:	Deportation of the complainant to Turkey
Substantive issues:	Risk of torture upon return to the country of origin
Procedural issues:	None
Articles of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 466/2011

Submitted by:	Nicmeddin Alp (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	21 June 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 466/2011, submitted to the Committee against Torture on behalf of Nicmeddin Alp under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Nicmeddin Alp, a Turkish national born in 1962. His asylum application was rejected in Denmark and, at the time of submission of the complaint, he was awaiting expulsion to Turkey. He claims that his expulsion to Turkey would constitute a violation, by Denmark, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Niels-Erik Hansen.

1.2 On 24 June and 28 June 2011, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request for interim measures of protection to suspend his expulsion. On 28 June 2011, the complainant was returned to Turkey by the Danish authorities.

Factual background

2.1 The complainant is an ethnic Kurd and a Muslim from Nusaybin, Turkey. Since 1982, he has been called up yearly to perform military service, but has not responded to the calls. From 1987 to 2001, he was a member of the Kurdistan Liberation Party (PRK-Rizgari, the PRK). In 1982, a number of party members were arrested and provided the

police with information regarding the complainant's political activities. As a consequence, on 1 April 1983, he was arrested and subjected to torture by the police while in detention.[1] In 1988, the Supreme Court sentenced him to 20 years' imprisonment. However, in 1991, he was released on parole on the condition that he stop his political activities and undertake not to change residence for six years and seven months. He did not comply and, instead of starting his military service, he moved to the Adana area, where many Kurds lived, and began working for a political organization arranging activities for the PRK.[2] In the period 1991–1994, he was the PRK representative in Adana. In 1991, he attended a PRK conference in Greece. In the meantime, his family received convocations for the complainant to perform his military service and return to the area he was assigned to after his release in 1991. It appears that, at that point in time, it was possible for the complainant to travel across Turkey, on his own identity documents, without risking arrest for evading military service or failing to reside in the assigned area. According to him, a person could be searched, arrested and punished only if wanted for political reasons.

2.2 In 1994, the authorities started to arrest PRK members in large cities. In Istanbul, they discovered archives containing names of PRK members, including reports about the complainant's political activities. As he had become wanted by the authorities, the party decided to send him, with false identity documents, to Romania, in November 1994. The trip between Turkey and Romania lasted about nine hours. His parents and siblings remained in Turkey.

2.3 In Romania, the complainant was received by party members and his elder brother, a Swedish resident running a business in Romania. In 1997, the complainant was arrested and he immediately requested asylum. On 13 August 1997, he was recognized as a refugee, on the grounds of his PRK membership since 1976, his detention between 1983 and 1991 in Turkey and his ill-treatment in detention. Amnesty International became aware of his case through his brother and the PRK. The complainant was married in Romania and had a child; he also ran a successful business there.

2.4 In October or November 1999, the complainant represented the PRK at a large party conference in Romania. Turkish intelligence agents, who also attended the conference, threatened to kill him or abduct him and bring him back to Turkey. Thereafter, the complainant was once stopped and once attacked in Bucharest, but he managed to escape. He subsequently contacted the police but they could not help him, for lack of evidence. According to him, the Turkish intelligence service had good opportunities to obtain information about him from the Romanian authorities, as they cooperated well together. Feeling threatened, the complainant obtained a visa for the Netherlands, where his sister lived. In 2001, he flew to the Netherlands for 17 days. He did not request asylum there as he feared being returned to Romania.

2.5 On an unspecified date in 2001, he travelled to Denmark. On 19 June 2001, 10 days after his arrival, he requested asylum there, claiming that he would risk imprisonment and torture if returned to Turkey, because of his political activities and non-performance of military service.

2.6 On 26 July 2002, the Danish Immigration Service rejected his asylum request, for lack of credibility, without ordering a medical examination regarding the complainant's

[1] See para. 2.6 below; according to the Danish Refugee Appeals Board decision of 28 June 2006, on file, he was arrested and sentenced for armed robbery.

[2] As per the complainant's submission before the Appeals Board in 2002, he informed PRK members of the party's politics and they subsequently recruited new party members. As per his submission before the Appeals Board in 2006, he informed Kurds about the Kurdish liberation fight and recruited new party members.

torture marks. Nothing in the case file indicates that the complainant requested a medical examination. On 8 November 2002, the Danish Refugee Appeals Board (the Appeals Board) upheld the decision on appeal.[3] At the same time, the Appeals Board did not contest the complainant's claim that he had been an active member of the PRK until the police had arrested him in May 1983; that he had been tortured during the first 38 days in detention, in particular beaten on his feet and body, hung by the arms, forced to stand for 24 hours, and subjected to electroshock, cold showers and psychological pressure. Although after the first 38 days in detention the torture became less severe, he continued to be beaten regularly. The Appeals Board also noted that the complainant had been sentenced to 20 years' imprisonment in 1988 but had been released on parole in 1991, on the condition that he stop his political activities.[4] According to the complainant, the Appeals Board found that his account lacked credibility, because he had forgotten to inform the Danish authorities of his refugee status in Romania and had submitted that he had travelled by plane from Turkey to Copenhagen in 2001.

2.7 Later in 2002, after the rejection of his asylum request, the complainant left Denmark for Sweden, where he requested asylum and family reunification. On an unspecified date, the Swedish asylum authorities rejected his asylum request, for lack of credibility, and deported him back to Denmark on 19 September 2003, under article 10, paragraph 1 (e), of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention).[5]

2.8 On 13 October 2003, the Appeals Board asked the Office of the United Nations High Commissioner for Refugees (UNHCR) to provide information regarding the complainant's refugee status in Romania. On 10 January 2005, UNHCR submitted that he had applied for refugee status in Romania on 13 October 1996. On 13 August 1997, he had been granted asylum for three years there, on the grounds of his PRK membership since 1976, his imprisonment between 1983 and 1991, and his ill-treatment in detention. His permit to stay in Romania had been extended until 11 August 2002. However, as he had not requested the subsequent extension of his permit, he could not again take up residence in Romania. On 15 September 2005, the Appeals Board received a copy of the complainant's asylum file from UNHCR.

[3] As per the decision of 8 November 2002, on file, the Appeals Board emphasized that the applicant had not given a detailed account of his alleged political activities; rather, he had described them in very general terms. It also emphasized the reply of 5 April 2002 of the Danish Ministry of Foreign Affairs, in which the Ministry submitted its assessment that the applicant would not risk prosecution for the activities he conducted for the PRK, if returned to Turkey, as he was not mentioned in the indictment of the 1994 proceedings and as his activities for the PRK were of a non-violent nature; it would be possible for him to return to Turkey without a Turkish passport by presenting his Turkish identification. The Appeals Board considered that the applicant had not rendered it probable that he would risk a disproportionate punishment if returned to Turkey due to his failure to perform his military service.

[4] Before the Appeals Board in 2002, the complainant submitted that he had stopped his political activities for the PRK in 1999.

[5] Although no relevant decision of the Swedish authorities has been provided, it appears from the material on file that the claimant did not inform those authorities of his refugee status in Romania. It should be noted that under article 10, paragraph 1 (e), of the Dublin Convention, the European Union Member State responsible for examining an application for asylum according to the criteria set out in the Convention is obliged to take back an alien whose application it has rejected and who is illegally in another Member State.

2.9 In the meantime, the complainant left Denmark for Germany, without informing the Danish authorities. His attempts to get married in Germany were unsuccessful, as he had no passport. On 30 May 2005, the German authorities deported him back to Denmark.

2.10 On 5 April 2006, the Appeals Board informed the complainant of its decision to reconsider his case. At the hearing before the Appeals Board, the complainant confirmed that he had been granted refugee status in Romania and that he had stayed there for seven years. He added that his relations with the PRK had ended in 2000 and that, therefore, he had not contacted the PRK in Denmark. As regards the risk of being subjected to ill-treatment if returned to Turkey, he stated that the Turkish authorities would recognize him, even if he had stopped his activities for the PRK; that, at worst, he would be called up for military service; that he would risk imprisonment, for 12 years, to serve the remainder of his 1988 sentence, and/or for 7 years, if the Turkish authorities charged him with having led the PRK in Turkey; and that he would be subjected to enforced disappearance.

2.11 On 28 June 2006, the Appeals Board rejected the complainant's asylum request as lacking credibility and found that he had failed to substantiate that he would be at risk of persecution if forcibly returned to Turkey. No medical examination of the complainant was requested by the court.[6] Nothing in the case file indicates that the complainant requested such an examination either.

2.12 On 8 August 2008, the UNCHR office in Romania informed the complainant that as he had not requested an extension of his refugee status in Romania, he was no longer considered as a refugee in Romania. UNHCR noted that the expiry of his refugee status could be challenged in Romanian courts, but such proceedings were usually lengthy and the outcome was difficult to predict.

2.13 On 28 June 2011, the complainant was returned to Turkey by the Danish authorities.

2.14 The complainant argues that he has exhausted all available domestic remedies, as the decisions of the Appeals Board are not subject to appeal.[7]

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[6] As per the decision of 28 June 2006, on file, the Appeals Board found, in particular, that the complainant had made contradictory statements regarding his activities and places of residence in 1991 and 1994, that he had concealed his residence in Romania before the Danish authorities. It also noted that he had not explained why he had given up his residence in Romania until the asylum proceedings in Denmark had been reopened. It considered as not credible his claim that he had left Romania in 2001 because of the two alleged incidents of 1999, which he never disclosed to the Romanian asylum authorities. It found that he had given very general and contradictory information about his political activities after his release in 1991, both regarding their level, the period covered and the meetings attended. It also established that, after his release on parole in 1991, the complainant had obtained a driving licence, lived under his own name in Turkey and had been able to travel to Greece and return to Turkey. It found, therefore, that the complainant could not have been wanted under the circumstances and that his claim regarding the risk of persecution, in particular due to his failure to complete military service, was unsubstantiated.

[7] Reference is made to the concluding observations of the Committee on the Elimination of Racial Discrimination on Denmark (CERD/C/DEN/CO/17), paragraph 13, whereby the Committee noted with concern that decisions by the Appeals Board on asylum requests were final and may not be appealed before a court and recommended that asylum seekers be granted the right to appeal against the decisions of the Appeals Board. Reference is also made to the State party's follow-up replies (CERD/C/DEN/CO/17/Add.1), paragraph 12, in which the State party noted that decisions by the Appeals Board are final, "which means that it is not possible to appeal the Board's decisions. This is stated by law and confirmed by a Supreme Court decision of 16 June 1997". Reference is also made to Committee against Torture communications No. 210/2002, *V.R.* v. *Denmark*, decision adopted on 17 November 2003; No. 225/2003, *R.S.* v. *Denmark*, decision of inadmissibility adopted on 19 May 2004, and No. 209/2002, *M.O.* v. *Denmark*, decision adopted on 12 November 2003 (deportation

The complaint

3.1 The complainant argues that his forcible return to Turkey constitutes a breach by Denmark of its obligations under article 3, paragraph 1, of the Convention. He claims that he has established a prima facie case before the Committee, as he was granted refugee status because there is a risk of him being subjected to persecution in his country of origin. He adds that reports of international organizations demonstrate that the human rights situation in Turkey is in violation of the Convention. Even if the general situation in the country has changed since his departure in 1994, the situation of politically active Kurds remains difficult.[8] Although the Danish authorities questioned his credibility, they have not contested his past torture and imprisonment in Turkey. He explains the absence of medical documents in support of his torture claim by the failure of the Danish authorities to conduct a medical examination.[9] He emphasizes that he has been politically active since the 1980s and will have to serve the remaining 12 years' imprisonment upon his return to Turkey.

3.2 The complainant also claims a violation of his rights under article 3, paragraph 2, of the Convention owing to the lack of investigation into his case by the Danish authorities, notably their failure to conduct a medical examination, and the lack of reasoning regarding the risk of torture, if returned to Turkey, in the decisions of the Appeals Board.

State party's observations on admissibility and merits

4.1 On 3 January 2012, the State party submitted its observations on admissibility and merits. It contends that the claim under article 3 should be declared inadmissible, since the complainant has failed to establish a prima facie case, for purposes of admissibility under article 22 of the Convention and rule 107 of the Committee's rules of procedure ().[10] In the alternative, the State party submits that no violation of article 3 of the Convention occurred in relation to the merits of the case.

4.2 The State party recalls the facts of the case. As to the domestic asylum proceedings, it submits that the complainant entered Denmark without valid travel documents, on 11 March 2001, and applied for asylum on 19 March 2001. On 26 June 2002, the Danish Immigration Service rejected his application; the decision was upheld by the Appeals Board on 8 November 2002. On 5 April 2006, the Appeals Board decided to reopen the proceedings in the light of information from UNHCR. On 28 June 2006, the Appeals Board again upheld the decision of 26 June 2002. On 4 July 2007, the complainant's brother and sister-in-law requested that the proceedings be reopened. On 27 September 2007, the Appeals Board informed the complainant that the request for reopening could not be considered as the Board was unaware of his place of residence. On 16 June 2011, the complainant's counsel requested a reopening of the proceedings,[11] which was denied by the Appeals Board on 27 June 2011.

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cases), whereby the State party did not contest admissibility on account of non-exhaustion.

[8] Reference is made to communications No. 373/2009, *Aytulun and Güclü* v. *Sweden*, decision adopted on 19 November 2010; and No. 349/2008, *Güclü* v. *Sweden*, decision adopted on 11 November 2010.

[9] Reference is made to two communications against Denmark, No. 409/2009, discontinued on 11 November 2010, and No. 460/2011, discontinued on 14 May 2012, in which the complainants, who had allegedly been subjected to torture in their countries of origin, were not initially allowed to undergo a medical examination; the Danish Appeals Board decided to reopen those cases and grant asylum to the complainants after the registration of the cases by the Committee.

[10] CAT/C/3/Rev.4 (now rule 113, CAT/C/3/Rev.6).

[11] As per his request of 16 June 2011, the counsel contested the failure of the authorities to conduct a medical examination.

4.3 The State party explains in detail the applicable domestic asylum law and its international obligations, such as the Convention relating to the Status of Refugees (the Refugee Convention), the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. It further describes the organization and decision-making process of the Refugee Appeals Board. It notes, in particular, that the Board is an independent quasi-judicial body, composed of two judges and other members, such as attorneys or employees of the Ministry of Justice, who do not serve in the secretariat of the Board; the Board members are independent and cannot accept or seek directions from the appointing or nominating authority. The decisions of the Board are not subject to appeal. Although an appeal can be brought before the domestic courts under the Danish Constitution, it is limited to legal issues and does not allow for a review of the assessment of evidence. The State party further submits that, as is normally the case, the complainant was assigned a legal counsel, and they both had an opportunity to study the case file and the background material before the meeting of the Board. The hearing was also attended by an interpreter and a representative of the Danish Immigration Service. The Board conducted a comprehensive and thorough examination of all evidence in the case.

4.4 Furthermore, when the Danish immigration authorities decide on applications for asylum, they assess the human rights situation in the receiving country, as well as the risk of individual persecution in that country. Therefore, the complainant is using the Committee only as an appellate body, to obtain a new assessment of his claim, which has already been thoroughly considered by the Danish immigration authorities. With reference to paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,[12] the State party submits that the Committee is rather a monitoring body and should give considerable weight to findings made by the Danish authorities, in particular its Appeals Board.

4.5 As to whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture in Turkey, the State party refers to the Appeals Board decisions of 8 November 2002 and 28 June 2006 in their entirety. It reiterates the reasons underlying the Board's finding that the complainant failed to substantiate the existence of such a risk, in particular, that he had made contradictory statements about his political work and places of residence; that he had failed to substantiate the risk that he would be subjected to disproportionate punishment because of his failure to complete military service; and that he had been able to live under his own name, to get a driving licence and to enter and leave Turkey freely after his release on parole in 1991.

4.6 The State party challenges the credibility of the complainant's statements and underlines the following inconsistencies. First, the complainant stated to the Romanian authorities that he had gone to Greece after his release in 1991 and returned to Turkey in 1992, whereas he submitted to the Danish authorities that he had gone to the Adana area in Turkey after his release. When confronted with those inconsistencies, the complainant replied that he did not consider them important. Second, regarding his political activities after his release, he stated before the Appeals Board in 2002 that he had been a PRK representative but had not recruited new members, whereas in 2006 he stated that he had recruited new party members and provided them with social and historical facts about Kurdistan. Third, although in 2006 he submitted to the Appeals Board that he had requested

[12] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX.

asylum in Romania in 1997, it follows from his Romanian asylum file that he requested asylum at the Greek embassy in Romania in 1996. In the light of those inconsistencies, which have not been reasonably explained by the complainant, the State party is unable to accept his statements.

4.7 The State party refutes the complainant's contention, with respect to the Appeals Board decision of 8 November 2002, that the assessment of his credibility was based on his failure to notify the Danish authorities of his refugee status in Romania. It explains that the Board was then unaware of his failure to do so. It further argues that the fact that the complainant had been granted refugee status in the past, in another country, is not in itself sufficient to conclude that his removal to Turkey would contravene article 3 of the Convention.

4.8 As to the complainant's contention that the Danish authorities have failed to conduct a medical examination, the State party submits that the present case did not warrant otherwise in the light of the finding of the Appeals Board that the complainant had failed to substantiate the risk of being subjected to torture, if returned to Turkey. The State party explains that the Board may request a medical examination in cases invoking torture as a reason for granting asylum. The decision as to the necessity of such an examination is usually made at a Board hearing. The necessity of such an examination is determined on a case-by-case basis and is particularly contingent on the credibility of the torture-related claims. If the Board considers such a claim credible but establishes no real and present risk of torture upon return, a medical examination will normally be dispensed with. Similarly, such an examination will not be necessary if the Board considers that an asylum seeker has not been credible throughout the proceedings, and it rejects his torture claim altogether. However, when the Board considers that an asylum seeker meets the requirements for a residence permit under article 7 of the Aliens Act[13] but the accuracy of his statement remains questionable, a medical examination can be conducted. The State party also submits that the complainant's alleged torture during his imprisonment between 1983 and 1991 is not in itself a sufficient ground for granting asylum.

4.9 The State party challenges the relevance of the complainant's reference to the Committee's case law. It submits that the authors of communications Nos. 373/2009 and 349/2008 were members of the Kurdish Workers Party (PKK) who participated in the organization's armed fight and therefore risked persecution under the Turkish Anti-Terrorism Law. Communications Nos. 409/2009 and 460/2011, in which the Appeals Board reopened the asylum proceeding and issued residence permits to the complainants, were submitted by nationals of the Syrian Arab Republic and Eritrea, respectively. However, it should be noted that the facts are distinguishable, including country-specific information regarding the Syrian Arab Republic and Eritrea as compared to Turkey, in the present case.

4.10 As to the complainant's reference to the description of his alleged torture that was included in the 2002 decision of the Appeals Board, the State party clarifies that the

[13] Article 7 of the Aliens (Consolidation) Act No. 785 of 10 August 2009 reads:

7. (1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951).

(2) Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. [...]

(3) A residence permit under subsections (1) and (2) can be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection.

decision merely reproduced his statements to the Danish asylum authorities, which does not imply that the Appeals Board accepted them as true.

4.11 Should the Committee declare the communication admissible, the State party submits that the complainant has failed to establish that his removal to Turkey would contravene article 3 of the Convention. Paragraph 5 of general comment No. 1 places on the complainant the burden to establish an arguable claim. Furthermore, the risk, for the complainant, of being subjected to torture must be assessed on grounds that go beyond mere theory and suspicion, and, although it does not have to be highly probable, it should be real, personal and present, under paragraphs 6 and 7 of general comment No. 1. The State party invokes the Committee's jurisprudence and submits, with reference to its arguments contained in paragraphs 4.3 to 4.10 above, that the complainant has failed to establish the existence of such a risk for him, in Turkey. Therefore, his return to Turkey does not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 26 February 2012, the complainant explained that although he generally agrees with the description of the facts by the State party, the State party has omitted that the counsel's request for a reopening of the proceedings, filed in 2011, also contained a request for the conduct of a medical examination, which was rejected by the Appeals Board on 27 June 2011. He challenges the State party's argument that a medical examination was unnecessary in his case, for lack of credibility. On the contrary, such an examination should have taken place because his credibility was at issue. The complainant argues that his deportation to Turkey, together with the rejection of his medical examination request, constituted a violation of article 3, paragraphs 1 and 2, of the Convention. He also argues that, in the circumstances, the State party's comments on the merits are insufficient.

5.2 The complainant further points out several problems related to the organization and decision-making process of the Appeals Board. First, the decisions of the Board, notably its assessment of evidence, are not subject to review by a court. Second, it lacks impartiality, as one of its three members is an employee of the Danish Ministry of Justice, which processes the applications for a residence permit on humanitarian grounds filed by rejected asylum seekers.

5.3 The complainant emphasizes that, under the Refugee Convention, asylum can be granted based on one's past torture before fleeing a country, even if the risk of persecution upon return thereto has not been established. This notwithstanding, and despite the fact that article 7, paragraph 1, of the Aliens Act refers to the definition of a refugee contained in the Refugee Convention, a residence permit can be granted to a victim of past torture only if there is a risk that he or she would be subjected to torture again, if returned to his or her country of origin. Therefore, it is important to allow a medical examination regarding past torture even if there is no evidence of persecution or torture in the future. In addition, such an examination may support one's description of torture before the Appeals Board, as the Board may "forget" that torture suffered in the past could lead to the recognition of refugee status under the Refugee Convention, even if the risk of persecution or torture no longer exists. Furthermore, under article 7, paragraph 2, of the Aliens Act, the risk of being subjected to torture or persecution should be real. The complainant claims that "real" is difficult to assess, but might mean "highly probable", which is not required under the Convention.

5.4 He argues that the State party fails to refer specifically to the Convention in some parts of its observations, which implies that domestic legislation and the practice of the Appeals Board may not be in line with article 3 of the Convention and general comment No. 1. Unlike the European Convention on Human Rights, international human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, have not been incorporated into the domestic legislation, despite recommendations to that effect by the respective treaty bodies.[14]

5.5 The complainant further points out that no oral hearing regarding his counsel's request for a medical examination took place. According to the complainant, the Danish authorities did not find that his claim regarding his past detention and torture by the Turkish authorities, and his reference to the Committee's recent case law regarding Turkey, constituted a sufficient ground to conduct a medical examination for torture. The Danish authorities did not apply any special treatment in his regard and, furthermore, put him in a closed detention camp pending deportation. According to the complainant, in cases where torture is invoked in an asylum claim, the authorities should seek the asylum seeker's agreement to undergo a medical examination, to support his or her allegations of torture. The authorities did not seek such an agreement from the complainant, although he was willing to undergo a medical examination.

5.6 The complainant reiterates that asylum should be granted to victims of past torture, regardless of the risk that they would be subjected to torture upon return to their country of origin. In that connection, a medical examination is the only way to prove past torture. He acknowledges that he did not appear not credible throughout the proceedings and that the Appeals Board rejected his torture claim altogether. He claims, however, that although the Board "did not directly reject" his statement about the imprisonment and torture, it did not explain its doubts to that effect but, instead, "jumped to the conclusion that there is no risk of torture upon return".

5.7 He further claims that the test used by the Appeals Board to opt or not for a medical examination is difficult to understand. He assumes that he did not fulfil the test requirements. At the same time, he claims that the absence of the risk, for him, of being subjected to torture if expelled from Denmark, cannot be based solely on his submissions about the trip to Greece and the return to Turkey, as those submissions, in themselves, do not permit to establish that he was not tortured at the hands of the Turkish authorities. According to general comment No. 1, the complainant's credibility is only one element among many others in an assessment of the risk of torture upon return. In his circumstances, a medical examination was necessary, in particular, in the light of the State party's obligation under article 3, paragraph 2, of the Convention, to take into account all relevant considerations to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture in the country of origin.

5.8 The complainant disagrees with the State party's argument that his communication is inadmissible as manifestly ill-founded. He states that Turkey is a country where gross, flagrant and mass violations of human rights occur, which is confirmed by the Committee's recent concluding observations on Turkey.[15] The State party has not directly denied that he was imprisoned and subjected to violence at the hands of the Turkish authorities. A medical examination should have been conducted to clarify inconsistencies in his case. Therefore, the Committee should declare his case admissible and review it on the merits.

[14] Reference is made to the concluding observations issued by various Committees for Denmark: CAT/C/DNK/CO/5, para. 9; CCPR/C/DNK/CO/5, para. 6; CEDAW/C/DEN/CO/7, para. 14; CERD/C/DNK/CO/18-19, para. 8; and CRC/C/DNK/CO/4, para. 11. The complainant adds that, as a consequence, the legal status of the decisions of the Committee against Torture in connection with individual complaints is uncertain and the State party is reluctant to implement the Committee's views.

[15] CAT/C/TUR/CO/3.

5.9 The complainant argues that the inconsistencies in his submissions to the Danish asylum authorities were minor and, therefore, irrelevant to the consideration of his asylum claim. He initially withheld information about his residence in Romania as he did not want to be returned to that country, where he did not feel safe because the Turkish authorities had located him there. He disagrees with the State party's argument that his removal to Turkey, despite him having been recognized as a refugee in Romania, would not be sufficient grounds to find a violation of article 3 of the Convention. He also rejects the State party's argument that his alleged torture in prison between 1983 and 1991 is not a sufficient ground for obtaining asylum. In connection with the refusal of the Danish authorities to conduct a medical examination for torture, he claims that the State party has failed to analyse his claim under paragraph 8 (b)–(e) of general comment No. 1. His recognition as a refugee in Romania, on account of a well-founded fear of persecution in Turkey, should lead to his recognition as a refugee in Denmark.

5.10 The complainant reiterates that communications No. 373/2009 and No. 349/2008 are relevant to his case. Although he was not a PKK member, he was politically involved; nevertheless, the State party has not mentioned paragraph 8 (e) of general comment No. 1 in its assessment of the risk of torture upon return to Turkey. Those communications are also relevant in terms of paragraph 8 (a) of general comment No. 1, because they contain the Committee's analysis of the human rights situation in Turkey, which is characterized by persistent gross and flagrant human rights violations. He further refers to the Committee's concluding observations on Turkey[16] to underline that torture is a major problem in Turkish prisons, and that, this notwithstanding, the concluding observations were not included in the background material on the country collected by the Appeals Board. There is, therefore, no reason to believe that only PKK members, persecuted under the Turkish Anti-Terrorism Law, are subjected to torture in Turkey.

5.11 Furthermore, communications No. 409/2009 and No. 460/2011 illustrate, according to the complainant, how the Danish authorities neglected their responsibility to allow a medical examination for persons who had been subjected to torture in countries with a pattern of gross, flagrant and mass human rights violations, before rejecting their asylum requests.

5.12 The complainant argues that the Appeals Board has a duty to issue an explicit decision as to whether it has accepted as true that he was tortured before having fled Turkey. No such decision was made in his case, despite the fact that his claim of torture has paramount importance for the assessment under paragraph 8 (b) and (c) of general comment No. 1. His case is thus similar to communication No. 339/2008, whereby the Committee established that the State party had never denied that the complainant, a politically involved Iranian national, had been tortured in the past, and found a violation of article 3 of the Convention on account of his forced removal to the Islamic Republic of Iran.[17]

5.13 The complainant believes that the State party's observations on the merits must be refuted, because they contain no mention of the grounds listed in paragraph 8 (a)–(g) of general comment No. 1.

5.14 The complainant's counsel submits that, according to family members, the complainant was detained after his arrival in Turkey. As at 16 March 2014, counsel did not have information as to whether or when he would be released. He fears that the complainant could be subjected to torture in detention.

[16] Ibid., paras. 7–13.

[17] Communication No. 339/2008, *Amini* v. *Denmark*, decision adopted on 15 November 2010.

5.15 In conclusion, the complainant submits that his return to Turkey constitutes a violation of article 3, paragraphs 1 and 2, of the Convention. First, by rejecting his asylum request on 26 June 2002 and 27 June 2011, without a medical examination, the Danish authorities failed to take into account all relevant considerations to determine the risk, for him, of being subjected to torture upon return to Turkey, in violation of article 3, paragraph 2, of the Convention. Second, the denial of a medical examination in asylum cases and the refusal to allow evidence in the form of such an examination constitute a matter of concern in a number of cases filed against the State party.[18] The complainant expresses hope that his case will clarify the State parties' responsibility to consider such evidence, under paragraph 8 (a)–(e) of general comment No. 1. Lastly, he claims compensation for the suffering inflicted upon him due to his forcible deportation. Finally, counsel asks the Committee to clarify the complainant's present situation with the Turkish authorities.

State party's further submissions

6. On 13 April 2012, the State party reiterated its previous observations and submitted further information concerning the complainant's comments. In particular, it agrees with his argument that under the Refugee Convention, refugee status can be granted with reference to the applicant's subjective fear without such fear being based on objective and ascertainable circumstances.[19] The State party argues, however, that the application of the Refugee Convention does not fall within the Committee's mandate and dismisses the complainant's argument as irrelevant to the assessment of the risk under the Convention. It submits that the issue of subjective fear is based on the same account, evidence and facts as were previously presented to, and carefully considered by, the Danish authorities.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has not contested that the complainant has exhausted all available domestic remedies.

7.3 The Committee notes the State party's submission that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible. Since both the State party and the complainant

[18] Reference is made to communications No. 409/2009 and No. 460/2011, referred to above (discontinued further to the State party's granting asylum to the complainants), No. 429/2010 *Sivagnanaratnam* v. *Denmark*, decision adopted on 11 November 2013, and No. 458/2011 (pending).

[19] Reference is made to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, 1992), paras. 37 ff.

have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

8.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[20] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned,[21] while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.4 The Committee notes that the complainant claims to have been tortured during his imprisonment in Turkey between 1983 and 1991 and that the State party should have ordered a medical examination to verify the veracity of his allegations. The Committee, however, notes that the State party's authorities thoroughly evaluated all the evidence presented by the complainant, found it to lack credibility, and did not consider it necessary to order a medical examination. In addition, it notes that the complainant's request for a medical examination was formulated only at a very late stage, that is, in the framework of the second request to reopen the asylum proceedings, submitted to the Appeals Board on the complainant's behalf in 2011. What is more, the Committee doubts the purpose which any medical examination would have served if carried out over 20 years after the alleged torture.

[20] See, inter alia, communication No. 203/2002, *A.R.* v. *Netherlands*, decision adopted on 14 November 2003, para. 7.3. See also communication No. 258/2004, *Dadar* v. *Canada*, decision adopted on 23 November 2005, para. 8.3.

[21] See, inter alia, communication No. 356/2008, *N.S.* v. *Switzerland*, decision adopted on 6 May 2010, para. 7.3.

8.5 The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, especially in the light of the refugee status granted to him by the Romanian authorities, the question is whether he remains, at present, at risk of torture in Turkey. The Committee notes at the outset the uncontested information on file that the complainant's refugee status ended after his voluntary departure from Romania and that he is not recognized as a refugee in any other country. It further takes note of the complainant's claim that he would be imprisoned, if returned to Turkey, either to serve the remainder of his 1988 sentence or if charged with having led the PRK political party in Turkey before his departure from that country in the 1990s. In that connection, it notes the complainant's statement that he stopped his activities for the PRK in 2000 at the latest. It also notes the counsel's information to the effect that the complainant was detained in Turkey after his removal from Denmark on 28 June 2011.

8.6 The Committee has noted the claim that the complainant runs the risk of being subjected to torture upon return to Turkey, in particular on account of his affiliation with the PRK and his failure to complete military service. It has also noted the complainant's reference to the general human rights situation in Turkey and the Committee's concluding observations underlining the use of torture in Turkish prisons. However, the Committee recalls that the occurrence of human rights violations in his or her country of origin is not sufficient, in itself, to lead it to conclude that a complainant, personally, runs a risk of torture. It also notes that the complainant has submitted no other evidence suggesting that, after his return to Turkey, he would have been imprisoned for his past political activities or his failure to do military service, would have had a disproportionate sentence imposed on him in that connection, or would have faced treatment in contravention of the provisions of the Convention. In the circumstances, the Committee considers that the material on file does not permit it to consider that the Danish authorities, which examined the case, failed to conduct a proper investigation. In addition, the Committee notes that no other material on file permits it to establish that, over 20 years after the alleged torture occurred, the complainant would still face a foreseeable, real and personal risk of being tortured or subjected to inhuman and degrading treatment in his country of origin.

8.7 The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the circumstances of this case, in the Committee's opinion, the complainant has not discharged that burden of proof.

9. In the light of the above considerations and in the absence of further pertinent information on file, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Turkey by the State party did not constitute a violation of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]